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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/914,767	12/03/2001	Duncan Shirreffs Bain	004565-070	4412

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EXAMINER

RAEVIS, ROBERT R

ART UNIT	PAPER NUMBER
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2856

DATE MAILED: 06/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/914,767

Applicant(s)

BAIN ET AL.

Examiner

Robert R. Raevis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 10 is/are rejected.
- 7) ☒ Claim(s) 9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7. 6) ☐ Other:

### DETAILED ACTION

1. The disclosure is objected to because of the following informalities: On page 2, "is" (line 1) should read - - it's - -; on page 6, delete lines 1-3 (as they are duplicative of the previous 3 lines)..

Appropriate correction is required.

2. Claim 10 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. As to claim 10, the disclosure does not explain how displacement is discriminated. Note that page 6 does not explain how to how to "exclude" (line 4 from bottom of the page) displacement.

3. Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As to claim 10; "discriminating" "displacement" from (relative to) what?

4. Claims 1, 2, 4, 3, 5, 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Golembeck et al in view of Eide et al.

Golembeck et al teach an apparatus for assessing the condition of a mattress, including: fame; indenter; load cell; press means; and recorder 46.

Golembeck does not refer to a "processing means" and arguably does not employ manually actuated means for pressing.

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As to claims 1, 5; it would have been obvious to utilize processing means to evaluate the recorded data because Golembeck teaches "evaluation" (col. 1, line 15) of the data, by evaluation of the displacement to provide an indication of the level ("firm" or "extra firm" or "super firm") of firmness of a mattress. (See col. 3, lines 25-29) In addition, while Golembeck's apparatus would appear to be actually (manually) via a switch, in any case Eide et al teach use of a manual drive handle to provide for a satisfactory force to test a mattress, necessarily suggestive of avoiding the application of a (heavy/costly) motor as in Golembeck.

As to claims 2 and 4; note beam 18 and base 16.

As to claim 3; it is known to attach hardness testers to the item under test as a means to provide a support for a movable tester.

As to claim 6; note Eide's "swiveling" (col. 3, line 39) teaching, suggestive of use of a curved surface in a mattress tester.

As to claim 7; swiveling element demand use of spheres.

5. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Golembeck et al in view of Eide et al as applied to claim 6 above, and further in view of either Kent or Toulc'Hoat et al.

As to claim 7; either Toulc'Hoat (element 1a) or Kent (element 20) teach use of wheels to provide for test surfaces to provide accurate hardness tests, suggestive of use of a wheel (in lieu of separate swiveler) in Golembeck.

6. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Golembeck et al in view of Eide et al as applied to claim 1 above, and further in view of Aschinger et al.

As to claim 8; it would have been obvious to employ a parallelogram linkage for a hardness tester because Aschinger teaches (Figure 8; col. 4, lines 5-12) use of parallelogram to prevent deviation of a hardness penetrator during testing.

7. Claim 10 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Golembeck et al.

As to claim 10; Golembeck measures/determines the "number of inches of deflection" (col. 3, line 25) necessary to achieve a "given pressure level" (line 23), and thus discriminates that particular measured displacement from all of the remaining displacement values that are recorded. A determination of the degree of firmness is a determination of the load/displacement relationship of the mattress.

8. Claim 9 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert R. Raevis whose telephone number is 703-305-4919. The examiner can normally be reached on Monday to Friday from 6:30am to 4:00pm. The fax phone number for the organization where this application or proceeding is assigned is 703-308-7722.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-4900.

*RAEVS*  
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